IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 53 OF 2006

Mr. Shridhar Nilkanth Sabnis & Os. ...Appellants
Vs.
Charity Commissioner, Worli, Mumbai & Ors. ...Respondents

Mr.R.S. Apte with Mr. A. A. Garge, Advocate for Appellants
Mr.Y.S.Jahagirdar with Mr. Nitin Jamdar, Advocate for Respondent No.2.

CORAM: SMT.ROSHAN DALVI,J.
DATED: 28TH JUNE, 2007

P.C.

1. This first appeal is filed to challenge the judgment and order dated 24th October, 2005 of the Additional District Judge, Kalyan in Regular Civil Appeal No.1 of 2005. It was an appeal under Section 72 of Bombay Public Trust Act, 1950 (BPT Act) challenging the order of the learned Charity Commissioner dated 5th January, 1993 in Revision Application No.57 of 1991. The main issue in the Appeal before the learned Additional District Judge was whether the suit Trust of the Temple known as Shree Ram Mandir was a public trust or a private trust and whether the properties of

the Trust were properties of such public trust.

2. The learned Additional District Judge has considered the entire evidence produced by the parties. The Applicant before that Court (The Appellant herein) led evidence, both oral and documentary. This Appeal under Section 72(4) of the BPT Act is a second appeal and hence, subject to restrictions prescribed under Section 100 of the C.P.C.

3. The Appellant must, therefore, show a substantial question of law that arises in the Appeal. Counsel on behalf of the Appellant contended that the documents between the parties are required to be construed and consideration of the documents would be a substantial question of law.

4. The Appellants have relied upon essentially one gift deed and two Sanads of the Trust. In the gift deed dated 8th May, 1878 the Giftor is the third party and the giftee is the predecessor in title of one of the Respondents. The gift deed inter alia mentions about **"***the temple which you have constructed***"**. The temple itself is in dispute, as to whether it belongs to public or a private Trust. The construction put upon the gift deed by the learned Additional District Judge is, therefore, correct. It relates to a temple constructed by the private parties mentioned in the gift deed.

5. Two Sanads of the Government are in favour of ***Ram Sudarshandas Guru Kamaldas and Shree Ram Mandirachi Milkat Shree Ram Sundardas Guru Kamaldas.*** It is common knowledge that the Sanad of the Government is a grant of the Government in respect of the land. The grant in the first Sanad is made to a specified person. The grant in the second Sanad mentions about the property of the temple and his name as a specified person. The specified persons mentioned in the Sanad are in the nature of the Guru and the disciple. The Respondent's Counsel rightly contended that, that relationship would be absent in a Public Trust.

6. The Appellant has relied upon the application for registration of public trust in which the documents relating to the provisions and creation of the Trust are shown not to have been known. The Appellant, therefore, contends that the temple is lost in antiquity. The sale deed relied upon by the Appellant was executed in 1869 for the construction of the temple. Hence, the temple has been constructed thereafter. In view of the sale deed which was specifically for the construction of the temple having been produced in evidence, the temple cannot be stated to be lost in antiquity.

7. No substantial question of law arises in this Appeal. Hence, the Appeal is dismissed.

(SMT. ROSHAN DALVI, J.)